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16

17 UNITED STATES DISTRICT COURT  
18 DISTRICT OF NEVADA  
19

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
Vera, Luis Javier Vazquez, and Kyle  
21 Kingsbury on behalf of themselves and all  
others similarly situated,

22 Plaintiffs,

23 v.

24 Zuffa, LLC, d/b/a Ultimate Fighting  
25 Championship and UFC,

26 Defendant.  
27  
28

Case No.: 2:15-cv-01045-RFB-(PAL)

**ZUFFA, LLC'S MOTION TO SEAL  
ZUFFA'S MOTIONS TO EXCLUDE  
THE TESTIMONY OF DR. HAL J.  
SINGER, DR. ANDREW  
ZIMBALIST, AND GUY A. DAVIS  
UNDER FED. R. EVID. 702 AND  
DAUBERT AND RELATED  
MATERIALS**

1 Pursuant to the Stipulated Order governing confidentiality of documents entered by the  
2 Court on February 10, 2016, ECF No. 217 (“Protective Order”) and Rule 26(c) of the Federal  
3 Rules of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully requests that the Court  
4 order the Clerk of Court to file under seal those portions of the motions and related materials from  
5 Zuffa’s Motion to Seal, Zuffa’s Motions to Exclude the Testimony of Dr. Hal J. Singer, Dr.  
6 Andrew Zimbalist, and Guy A. Davis under Fed. R. Evid 702 and *Daubert* and Related Materials  
7 (“*Daubert* Motions”) that Zuffa has already lodged under seal. Zuffa has good cause to seal the  
8 documents already filed under seal, as the documents and certain portions of the expert reports  
9 and depositions referenced contain trade secret and commercially sensitive information which, if  
10 disclosed, would likely harm Zuffa’s competitive standing, compelling reasons also exist to seal  
11 the documents Zuffa has filed under seal.

12 The Court previously granted Zuffa’s motion to seal certain documents and portions of  
13 motions that are of the same category and trade secret and commercial sensitivity that Zuffa seeks  
14 to seal here. Those documents were filed in connection with Zuffa’s Motion for Partial Summary  
15 Judgment as to Plaintiff Nathan Quarry on Statute of Limitations Grounds, and the Court found  
16 that compelling reasons existed to file those documents under seal. ECF No. 495. The Court  
17 should make the same finding that compelling reasons exist to seal the documents at issue here as  
18 the documents are of the same sensitivity and disclosure of these documents would likely result in  
19 the same risk of competitive harm as those from the partial summary judgment motion. In  
20 addition, some documents examined, quoted, and included here—like third-party financial  
21 documents and contracts marked highly confidential under the protective order—have been  
22 designated highly-confidential attorneys’ eyes only under the protective order.

### 23 Legal Standard

24 In the Ninth Circuit, if a motion is “more than tangentially related to the underlying cause  
25 of action,” compelling reasons are necessary to justify sealing materials. *Ctr. for Auto Safety v.*  
26 *Chrysler Grp., LLC*, 809 F.3d 1092, 1101, 1103 (9th Cir. 2016). However, if that is not the case,  
27 only good cause is necessary to justify sealing. *Id.* at 1097. The Ninth Circuit has not squarely  
28

1 considered whether a *Daubert* motion filed concurrently with an opening class certification brief  
2 necessitates “compelling reasons” to justify sealing materials.

3 As to the good cause standard, a party seeking to file documents under seal pursuant to  
4 that standard must make a “particularized showing” under the “good cause standard of Rule  
5 26(c).” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citations and  
6 quotation marks omitted). The Court has “broad latitude” under Rule 26(c) “to prevent disclosure  
7 of materials for many types of information, including, but not limited to, trade secrets or other  
8 confidential research, development, or commercial information.” *Phillips v. General Motors*  
9 *Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (citations omitted).

10 The “compelling reasons” standard requires a party to “articulate compelling reasons  
11 supported by specific factual findings that outweigh the general history of access and the public  
12 policies favoring disclosure.” *Kamakana*, 447 F.3d at 1179 (citations and quotation marks  
13 omitted). “Compelling reasons” have included preventing: disclosure of “sources of business  
14 information that might harm a litigant’s competitive standing,” *Nixon v. Warner Commc’ns, Inc.*,  
15 435 U.S. 589, 598 (1978) (citations omitted); the “release of trade secrets,” *Kamanaka*, 447 F.3d  
16 at 1179 (citing *Nixon*, 435 U.S. at 598); and “the release of . . . information [that] would result in  
17 an invasion of the privacy interests of third parties.” *GoDaddy.com LLC v. RPost Commc’ns*  
18 *Ltd.*, No. CV-14-00126-PHX-JAT, 2016 WL 1158851, at \*5 (D. Ariz. Mar. 24, 2016), on  
19 reconsideration in part, No. CV-14-00126-PHX-JAT, 2016 WL 1274120 (D. Ariz. Mar. 31,  
20 2016).

21 The Ninth Circuit has held that certain “confidential and commercially sensitive  
22 information,” including licensing agreements containing “pricing terms, royalty rates, and  
23 guaranteed minimum payment terms” meet the “compelling reasons” standard and are properly  
24 filed under seal. *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (“Electronic Arts”).  
25 The Ninth Circuit noted that these categories of information “plainly fall[] within the definition of  
26 ‘trade secrets’ and explained that “a trade secret may consist of any formula, pattern, device or  
27 compilation of information which is used in one’s business, and which gives him an opportunity  
28

1 to obtain an advantage over competitors who do not know or use it.” *Id.* (citations and quotation  
2 marks omitted).

### 3 **Argument**

4 The Ninth Circuit has never squarely addressed whether *Daubert* motions, submitted  
5 concurrently with the opening of class certification briefing, require compelling reasons to justify  
6 sealing documents associated with those motions. It has, however, noted that *Daubert* motions  
7 “filed in connection with pending summary judgment motions,” require compelling reasons to  
8 justify sealing documents. *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686  
9 F.3d 1115, 1119 (9th Cir. 2012). In *In re Midland*, the Ninth Circuit noted that the fact “[t]hat the  
10 records are connected to a *Daubert* motion does not, on its own, conclusively resolve the issue”  
11 and that a court must look at the circumstances related to the motion to determine whether the  
12 compelling reasons or good cause standard applies. *Id.* at 1119-20. The documents Zuffa seeks  
13 to file under seal meet the “compelling reasons” and, by extension, the “good cause” standard and  
14 are properly filed under seal.

### 15 **Descriptions of Documents to be Filed Under Seal**

16 *Expert Reports:* Zuffa seeks to file under seal portions of the expert reports and  
17 deposition testimony of Zuffa’s experts and Plaintiffs’ experts that contain or refer to highly  
18 confidential material and material for which compelling reasons exist for sealing.

19 The documents, deposition excerpts, and portions of expert reports Zuffa seeks to file  
20 under seal contain highly confidential and commercially sensitive information regarding Zuffa’s  
21 contractual clauses with its athletes and information regarding Zuffa’s athlete compensation  
22 terms, royalty rates, and other payment terms. Zuffa’s trade secret information is contained  
23 within the portions of these documents, exhibits, and portions of the motion referencing those  
24 materials and the public release of that highly confidential business information would result in  
25 competitive harm to Zuffa by providing its competitors with access to Zuffa’s pricing structure  
26 and standard contractual terms—two crucial elements of Zuffa’s proprietary business practices  
27 that have allowed it to compete in the marketplace for MMA athletes. *See Declaration of*  
28 *Nicholas A. Widnell in Support of Zuffa’s Motion to Seal Zuffa’s Motions to Exclude the*

1 Testimony of Dr. Hal J. Singer, Dr. Andrew Zimbalist, and Guy A. Davis and Related Materials  
 2 (“Motion to Seal”) (“Widnell Decl.”) ¶¶ 3-6.

3 Specifically, several of the redacted portions of Plaintiffs’ Expert Report and Rebuttal  
 4 reports and Zuffa’s Expert Reports and documents referenced and quoted from in those Reports  
 5 contain detailed analysis of Zuffa revenue and contractual information, including individual  
 6 athlete-level and event-level information as well as individual athlete contracts. This type of  
 7 information is very sensitive and MMA promoters are aware of the significant competitive risks  
 8 they face if the data were to be released publicly, as evidenced by Bellator’s designation of its  
 9 much less granular (quarterly) financial data as highly confidential under the Protective Order.  
 10 Counsel for Bellator explained to this Court that the “most sensitive documents” to Bellator  
 11 included event-level specific financial information. ECF No. 438, June 1, 2017 Hearing Tr.  
 12 39:11-15 (describing event-level profit-and-loss statements for individual fights (or bouts) as “the  
 13 most sensitive documents”). Counsel for Bellator further explained to the Court that any  
 14 information that would permit a “Bellator fighter compared to this fighter, they’re disclosing our  
 15 information,” which he characterized as “a very significant concern.” *Id.* at 16:16-21. In  
 16 addition, several redacted portions of Plaintiffs’ Expert Reports and Zuffa’s Expert Reports  
 17 contain aggregated (*e.g.* quarterly) and event-level financial data and sample individual athlete  
 18 contract from third party boxing and MMA promoters. This information is also highly sensitive  
 19 and disclosure of that information would, as Bellator’s counsel recognized, be very likely to cause  
 20 significant competitive harm if released publicly. Compelling reasons exist to seal the  
 21 information Zuffa has redacted in these Reports.

22 *Other documentary evidence:* In addition, several of the documents, deposition excerpts,  
 23 and portions of expert reports Zuffa seeks to file under seal contain quotations from or extended  
 24 exposition of highly confidential and sensitive business communications and documents that  
 25 contain strategic evaluation, payment information, and negotiation strategies relating to Zuffa and  
 26 non-Zuffa MMA athletes. For the reasons above, release of this information would be very likely  
 27 to cause competitive harm to Zuffa and provide an unfair and unearned competitive advantage to  
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1 Zuffa’s competitors. Compelling reasons exist to seal the information Zuffa has redacted and  
2 filed entirely under seal from this documentary evidence.

3 *Third party highly confidential documents:* For the reasons above, certain documents—  
4 especially third-party contract and financial documents that were designated highly confidential  
5 under the protective order—referenced and analyzed in the expert reports, and certain other  
6 documents that contain Zuffa’s trade secret or commercially sensitive information. Compelling  
7 reasons exist to seal the information Zuffa has redacted and filed entirely under seal from this  
8 third party documentary evidence.

### 9 **Conclusion**

10 For the foregoing reasons, Zuffa respectfully requests that the Court find that “compelling  
11 reasons” and “good cause” exist such that the documents Zuffa has filed under seal in connection  
12 with its *Daubert* motions are properly filed under seal.

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1 Dated: February 16, 2018

BOIES, SCHILLER & FLEXNER LLP

2  
3 /s/ Nicholas A. Widnell

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Zuffa, LLC's Motion to Seal Zuffa's Motions to Exclude the Testimony of Dr. Hal J. Singer, Dr. Andrew Zimbalist, and Guy A. Davis and Related Materials was served on February 16, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Roderick Crawford

Roderick Crawford, an Employee of Boies,  
Schiller & Flexner LLP